the ability to do business is predicated. To allow a street railway to charge for its right to use its tracks would be as permissible. Attempts by irrigation companies to collect for water rights in addition to the fee for distributing have been held invalid.[12] If such charges could not be made, certainly a valuation of such water right could not be added to the value of the property to increase the rates. Of course where the company has paid for the acquisition of water rights, a different result should follow.

On principle, the value of a franchise should not be a basis for determining rates. A franchise has value only in proportion to its capacity to earn profits; it increases in value with the earnings. If a high rate would be justified on account of the great value of the franchise, this fact would in turn enhance the value of the franchise itself and justify a still higher charge.[13] The principal case is the first square decision on this point, but seems opposed to previous judicial intimations.[14] There is a clear distinction between allowing for the value of a franchise where a plant is sold or taken by eminent domain, and allowing for it as a basis of rates. All courts allow for it in the former case,[15] as well as where the company has paid for the franchise.[16] A franchise has value for such purposes, but a company continuing in business would hardly add its value to the capital stock in estimating the annual income on its property.[17] If the value of the water right cannot be counted because that allows a charge for a value really contributed by the consumer, it seems inconsistent to allow for the franchise, really contributed by the public.

INTERPLEADER IN TAX CASES. — In New York a taxpayer who is about to be forced to pay taxes assessed on the same property in two towns may maintain a bill of interpleader against the towns or their tax collectors.[1] Such a bill is not allowed in Rhode Island [2] nor in Massachusetts.[3] A recent Massachusetts case gives two reasons for denying the relief. *Welch* v. *City of Boston*, 94 N. E. 271 (Mass.). The first is that the requirements for a bill of interpleader are not satisfied, in that there is no "privity" between the claimants, and that, as the amount of the taxes is different, the plaintiff is not impartial. These objections are merely technical.[4] The substantial reason given is that the relief would require

[12] Wheeler *v.* Northern Colorado Irrigating Co., 10 Colo. 582, 17 Pac. 487; San Diego Land & Town Co. *v.* National City, *supra.*

[13] See WYMAN, PUBLIC SERVICE CORPORATIONS, § 1104.

[14] See Brunswick & Topsham Water District *v.* Maine Water Co., 99 Me. 371, 375–380, 59 Atl. 537, 538–541. The United States Supreme Court has held that a company is entitled to an income on the amount actually paid for a franchise, but not upon the amount which that franchise has since increased in value. Willcox *v.* Consolidated Gas Co., 212 U. S. 19, 29 Sup. Ct. 192.

[15] Brunswick & Topsham Water District *v.* Maine Water Co., *supra.*

[16] Willcox *v.* Consolidated Gas Co., *supra.*

[17] *Cf.* Cedar Rapids Water Co. *v.* Cedar Rapids, 118 Ia. 234, 263, 91 N. W. 1081, 1091.

[1] Thompson *v.* Ebbet, Hopk. Ch. (N. Y.) 272; Dorn *v.* Fox, 61 N. Y. 264.

[2] Greene *v.* Mumford, 4 R. I. 313.

[3] Macy *v.* Inhabitants of Nantucket, 121 Mass. 351.

[4] See 17 HARV. L. REV. 489; 22 *id.* 294.

delaying the collection of taxes by injunction which is contrary to public policy.

The conflict between this principle of public policy and the desire of courts of equity to give adequate relief to the individual has caused a state of great confusion in the authorities. Three different points of view may be distinguished. 1. Some courts, in direct contradiction to the policy announced in the Massachusetts case, consider that the mere illegality of a tax gives the taxpayer a positive equity to enjoin its collection, even when the law gives an adequate remedy by a suit to recover the money if paid under an illegal tax.[5] 2. In many jurisdictions the courts, while professing to believe that, as a general rule, it is against public policy to enjoin the collection of taxes, do not allow that policy to interfere with the established jurisdiction of equity; but only allow it to prevent an extension of jurisdiction to all cases of illegal taxes.[6] If the jurisdiction is invoked to remove a cloud on title,[7] to prevent multiplicity of actions, or to avoid irreparable injury,[8] these courts will restrain the collection of illegal taxes. 3. There are many states whose courts take firm ground that public policy demands that equity should endeavor not to clog the wheels of government with injunctions.[9] The prevention of multiplicity of suits is not a sufficient ground for enjoining the enforcement of a tax in these jurisdictions,[10] and injunctions to remove a cloud on title caused by an illegal tax are given sparingly.[11] But the rule against enjoining the collection of taxes is seldom applied with perfect uniformity in the states that acknowledge its force. Such an injunction is sometimes allowed simply because of the hardship of a particular case.[12] Thus it seems that the policy of non-interference with taxes is treated, where it is recognized, not as an overriding doctrine cutting through equity jurisdiction,[13] but rather as a consideration against granting injunctive relief to be weighed in each case.[14]

Should the consideration of policy outweigh the hardship of denying the plaintiff relief in the case of interpleader? Dismissal of a bill of interpleader involves no unbearable hardship on anyone. It is a weaker case on the ground of public policy for equity jurisdiction than a bill of

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[5] Shenandoah Valley R. Co. *v.* Supervisors of Clarke County, 78 Va. 269. See Allwood *v.* Cowen, 111 Ill. 481, 486. A few legislatures also have passed statutes to this effect. GEN. CODE OF OH., 1910, § 12,075; KAN. GEN. STAT., 1909, § 5859.

[6] Dows *v.* Chicago, 11 Wall. (U. S.) 108; Indiana Mfg. Co. *v.* Koehne, 188 U. S. 681, 23 Sup. Ct. 452.

[7] See Wilson *v.* Lambert, 168 U. S. 611, 612, 18 Sup. Ct. 217.

[8] See Raymond *v.* Chicago Union Traction Co., 207 U. S. 20, 39, 28 Sup. Ct. 7, 14.

[9] Messeck *v.* Supervisors of Columbia County, 50 Barb. (N. Y.) 190. There are statutes in a few jurisdictions prohibiting judicial interference with the collection of taxes. U. S. REV. STAT., 1875, § 3224; NEB. COMP. STAT., 1901, c. 77, art. 1, § 144.

[10] Greenwood *v.* MacDonald, 183 Mass. 342, 67 N. E. 336; Dodd *v.* City of Hartford, 25 Conn. 232.

[11] New York Life Ins. Co. *v.* Supervisors of the City of New York, 1 Abb. Prac. (N. Y.) 250.

[12] Jackson *v.* City of New York, 62 N. Y. App. Div. 46, 70 N. Y. Supp. 877.

[13] This is the view taken by the younger Pomeroy. 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 270.

[14] The fact that a court is giving weight to this consideration of policy is often shown by a tendency to adhere strictly, in tax cases, to the ancient limitations of equity jurisdiction. See Dodd *v.* City of Hartford, *supra*; New York Life Ins. Co. *v.* Supervisors of the City of New York, *supra*.

peace,[15] for a multiplicity of suits is likely to cause inconvenience to the state. It is curious that in New York, where judicial interference with taxes is usually discountenanced,[16] a bill of interpleader should be allowed in tax cases.[17] The Massachusetts court, which is one of the firmest adherents of the principle of not interfering with the collection of taxes, and has denied an injunction in a case involving multiplicity of suits,[18] is amply justified in allowing public policy to override the jurisdiction of equity in the case of interpleader.

CONSTITUTIONALITY OF DISCRIMINATIONS ON THE PARTY-COLUMN FORM OF BALLOT.[1] — A recent case held unconstitutional an amendment of the New York Election Law[2] providing that "if any person shall have been nominated by more than one political party . . . for the same office, his name shall be printed but once upon the ballot"; and in the party column where his name is not printed shall be printed "see —— column";[3] and that to vote a "straight ticket" on such party column a mark shall be placed not only at the head of the column but also opposite the place where such candidate's name is actually printed.[4] *In the Matter of Hopper*, 46 N. Y. L. J. 221 (N. Y. Ct. App., Oct., 1911).[5]

The New York Constitution provides that every male citizen of twenty-one shall vote at all elections;[6] that no one shall be disfranchised;[7] and that elections "shall be by ballot or by such other method as may be prescribed by law provided that secrecy in voting be preserved."[8] But there is no provision that all elections shall be "free and equal."[9] The New York Court of Appeals, however, based their decision on the ground that such a provision could be implied, and that this law infringed this constitutional right of the electors. The court reasoned that

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[15] This view is taken in Rhode Island. Compare the case cited in note 2 with McTwiggan *v.* Hunter, 18 R. I. 776, 30 Atl. 851.

[16] Merchants National Bank *v.* Mayor of New York, 172 N. Y. 35, 64 N. E. 756.

[17] See note 1, *supra*.

[18] See note 10, *supra*.

[1] Three types of the Australian ballot seem to be in use in the United States: the so-called Massachusetts form on which the names of the candidates for an office are placed under the name of the office, followed by a designation of the party or parties by which the candidate is nominated, *cf.* Sawin *v.* Pease, 6 Wyo. 91, 42 Pac. 750; the "party-column" form, in use in New York; and a hybrid form, like that used in Colorado. COLO. REV. STAT., 1908, §§ 2235, 2236. A ballot similar to the last was declared unconstitutional in California. Eaton *v.* Brown, 96 Cal. 371, 31 Pac. 250.

[2] N. Y. LAWS OF 1911, c. 649, § 331.

[3] This regulation could hardly be defended on the ground that it saved printing or space on the ballot.

[4] The Supreme Court, Special Term, held the law to be unconstitutional. 45 N. Y. L. J. 2401. The Appellate Division reversed this decision. 46 N. Y. L. J. 1. This was in turn reversed by the Court of Appeals.

[5] *Cf.* Murphy *v.* Curry, 137 Cal. 479, 70 Pac. 461. But *cf.* State *ex rel.* Runge *v.* Anderson, 100 Wis. 523, 76 N. W. 482; State *ex rel.* Bateman *v.* Bode, 55 Oh. St. 224, 45 N. E. 195; Todd *v.* Board of Election Commissioners, 104 Mich. 474, 62 N. W. 564, 64 N. W. 496. Since the constitutional provisions as well as the statutes are dissimilar, the cases are not exactly in point.

[6] N. Y. CONST., Art. II, § 1.

[7] N. Y. CONST., Art. I, § 1.

[8] N. Y. CONST., Art. II, § 5.

[9] Many state constitutions so provide. See PA. CONST., Art. I, § 5; MASS. BILL OF RIGHTS, Part I, § 9; ILL. CONST., Art. II, § 18.